

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER on behalf of Snow)	
Leopard China Tyler, Rachel Rani)	4:04cv3264
Tyler, and Fuschia Marie Tyler,)	
)	MEMORANDUM AND ORDER
Plaintiffs,)	
v.)	
)	
COMMERCIAL FEDERAL)	
MORTGAGE COOPERATIVE, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 38, the Judgment by the Eighth Circuit Court of Appeals dismissing the appeal of the above-entitled case and assessing the \$255 appellate filing and docketing fees against the appellant, Billy Tyler. Because Mr. Tyler is a prisoner subject to the Prison Litigation Reform Act, the Eighth Circuit's Judgment states in pertinent part: "The full \$255.00 appellate filing and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court."

When, as in this case, the record contains no current trust account information for the plaintiff, the Eighth Circuit has instructed this court to assess an initial partial filing fee in a reasonable amount based on information available to the court. See Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997): "[F]ailure to file the prison account information will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances."

No recent information is available to the court concerning the appellant's finances. Therefore, the court will require an initial partial appellate filing fee of \$1.00, with the remainder of the fees to be collected in installments in the manner specified by 28 U.S.C. § 1915(b)(2).

THEREFORE, IT IS ORDERED:

1. That the Eighth Circuit Court of Appeals has adjudged the plaintiff-appellant, Billy Tyler, liable for the full \$255.00 appellate filing and docketing fees;
2. That, because Mr. Tyler is a prisoner, the fees may not be waived but may be paid in installments pursuant to 28 U.S.C. § 1915(b);
3. That the plaintiff's custodian shall collect from the plaintiff's inmate trust

account an initial partial appellate filing fee of \$1.00, and shall remit that amount to the Clerk of Court when funds are available;

4. That, thereafter, all present and future custodians of the plaintiff shall collect and remit the balance of the \$255.00 appellate filing fees in the manner required by 28 U.S.C. § 1915(b)(2); and

5. That the Clerk of the Court shall send a copy of this Memorandum and Order to the appropriate financial officer for the plaintiff's institution.

DATED this 22nd day of September, 2005.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge